



5001-06-P

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 228 and 252**

**[Docket DARS-2019-0030]**

**RIN 0750-AK12**

**Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause "Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles" (DFARS Case 2018-D047)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to modify the text of an existing clause prescription to require, instead of permit, the clause be included in applicable solicitations and contracts, pursuant to action taken by the Regulatory Reform Task Force.

**DATES:** Effective [Insert date of publication in the **FEDERAL REGISTER**].

**FOR FURTHER INFORMATION CONTACT:** Ms. Carrie Moore, telephone 571-372-6093.

**SUPPLEMENTARY INFORMATION:**

## **I. Background**

DoD published a proposed rule in the *Federal Register* at 84 FR 30986 on June 28, 2019, to modify the clause prescription at DFARS 228.370 to require that DFARS clause 252.228-7005, Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles, be included in all solicitations and contracts, when applicable. The rule also updates the text of the clause to follow current DFARS convention regarding the use of the word "shall" to indicate a mandatory requirement or action. One respondent provided a public comment on the proposed rule.

## **II Discussion and Analysis.**

A discussion of the comment received and the change made to the rule as a result of the comment is provided as follows:

*Comment:* The respondent suggested replacing the word "accident" with "mishap" throughout the clause to align with the terminology used in DoD Instruction 6055.07, "Mishap Notification, Investigation, Reporting, and Recordkeeping."

*Response:* As the use of the term "mishap" has become more prevalent throughout DoD in lieu of "accident" since the creation of the clause, and the clause is closely associated with the guidance in DoDI 6055.07, the clause title and text is updated to include the word "mishap" instead of "accident" in the final rule.

### **III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, including Commercially Available Off-The-Shelf Items**

This rule does not create any new provisions or clauses, nor does it change the applicability of the affected clause to contracts at or below the simplified acquisition threshold or to the acquisition of commercial items, including those for commercially available off-the-shelf items.

### **IV. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and E.O. 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### **V. Executive Order 13771**

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

## **VI. Regulatory Flexibility Act**

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The FRFA is summarized as follows:

The Department of Defense is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to amend the clause prescription at DFARS 228.370 to require that DFARS clause 252.228-7005, Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles, be included in all solicitations and contracts involving the manufacture, modification, overhaul, or repair of these items; update the text of the clause to follow current DFARS convention regarding the use of the word "shall" to indicate a mandatory requirement or action; and update the clause title by removing "Accident" and replacing it with "Mishap".

The objective of this rule is to ensure contractor cooperation: in the early reporting of accidents that involve an aircraft, missile, or space launch vehicle being manufactured, modified, repaired, or overhauled by the contractor in connection with the contract; and, with the Government investigation of such accidents. The modification of this DFARS clause supports a recommendation from the DoD

Regulatory Reform Task Force. No public comments were received in response to the initial regulatory flexibility analysis.

This rule requires, instead of permits, the inclusion of the clause in all applicable contracts, and updates the text of the clause to clarify its intent. It is presumed that the clause is already being included in all applicable contracts. The rule simply clarifies the Government's expectation on the usage of the clause.

Based on fiscal year 2018 data from the Federal Procurement Data System (FPDS), the Government awarded approximately 960 noncommercial contracts and orders for services under the following product service codes:

- AC16 - R&D- Defense System: Aircraft  
(Management/Support);
- AC26 - Defense System: Missile/Space Systems  
(Management/Support);
- AR96 - R&D- Space: Other (Management/Support);
- J014 - Repair, and Rebuilding of Equipment- Guided  
Missiles;
- J015 - Maintenance, Repair, and Rebuilding of Equipment-  
Aircraft and Airframe Structural Components;
- J018 - Maintenance, Repair, and Rebuilding of Equipment-  
Space Vehicles;

- K014 - Modification of Equipment- Guided Missiles;
- K015 - Modification of Equipment- Aircraft and Airframe Structural Components; and,
- K018 - Modification of Equipment- Space Vehicles.

Of the 960 contracts and orders awarded, approximately 16% of the awards were made to 54 unique small businesses entities. FPDS does not provide additional information on the types of support services provided under the contract, which can include manufacture, modification, overhaul, or repair work; therefore, the number of small business contractors impacted by this rule is expected to be less than the number of entities identified by the data.

This rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses. This rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternative approaches to the rule that would meet the stated objectives.

## **VII. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

## **List of Subjects in 48 CFR Parts 228 and 252**

Government procurement.

**Jennifer Lee Hawes,**

*Regulatory Control Officer, Defense Acquisition Regulations  
System.*

Therefore, 48 CFR parts 228 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 228 and 252  
continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

**PART 228—BONDS AND INSURANCE**

2. Amend section 228.370 by revising paragraph (d) to read as  
follows:

**228.370 Additional clauses.**

\* \* \* \* \*

(d) Use the clause at 252.228-7005, Mishap Reporting and  
Investigation Involving Aircraft, Missiles, and Space Launch  
Vehicles, in solicitations and contracts that involve the  
manufacture, modification, overhaul, or repair of aircraft,  
missiles, and space launch vehicles.

\* \* \* \* \*

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**252.228-7005 [Amended]**

3. Amend section 252.228-7005 by-

a. In the section heading and the clause title, removing  
"Accident" and adding "Mishap" in both places;

- b. Removing the clause date "(DEC 1991)" and adding "(NOV 2019)" in its place;
- c. In paragraph (a), removing "accident" and adding "mishap" in its place; and
- d. In paragraph (b), removing "accident" and "will" and adding "mishap" and "shall" in their place, respectively; and
- e. In paragraph (c), removing "will" and "accident" and adding "shall" and "mishap" in their place, respectively.

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